

REMARKS/ARGUMENTS

Following entry of the present Response and Amendment, claims 53-117 remain in this application, with claims 54, 65 and 104 being written in independent format.

The Office Action first objected to the drawings for allegedly failing to meet the requirements of 37 CFR § 1.84(p)(4)-(5).

Additionally, the specification was object to for allegedly containing various informalities.

The Office Action also rejected claims 42 and 53 under 35 U.S.C. § 112 as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Claims 9, 40 and 51 were rejected as allegedly containing various informalities.

Claims 1-12, 23-31, and 41 were rejected by the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,485,369 to Nicholls et al. (henceforth “Nicholls”) in view of the press release “Logility Reaches Agreement with INSIGHT to Enhance Supply Chain Optimization Capabilities” dated 30 April 1998 (henceforth the “Logility press release”). Further, the Office Action rejected claims 13-19, 22, 32-37 and 40 under 35 U.S.C. § 103(a) as allegedly being unpatentable over both Nicholls and the Logility press release in further view of the press release “SAP and Federal Express launch integrated solution to extend global supply-chain capabilities to R/3 users” dated 8 April 1998 (henceforth the “SAP press release”). Also, claims 20-21 and 38-39 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over both Nicholls and the Logility press release in further view of the article “The power of integration” by Francis J. Quinn dated 1 August 1998 (henceforth the “Quinn article”). Claims 42-67 apparently are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combined disclosures of Nicholls, the Logility press release, the SAP press release, and the Quinn article.

In the present Response and Amendment, claims 1-53 have been cancelled without prejudice, claims 54, 59-62, and 65 have been amended, and new claims 68-117

have been introduced for examination upon the merits. These amendments to the claims have been introduced to clarify the subject matter of the present invention, and to place the present application in better condition for allowance.

Additionally, the present Response and Amendment has corrected various typographical errors identified in the specification.

Further, Applicant has submitted herewith substitute drawings to correct reference numeral errors identified in the figures.

Applicant submits that the above-requested amendments do not add prohibited new subject matter, and respectfully requests reconsideration of the merits of the present application in accordance with these amendments and the following remarks.

Specification Objections

The Office Action objected to the filed specification for several alleged informalities. Applicant has herein requested several amendments to the specification that obviate any such informalities. The requested amendments to the specification do not add any prohibited new matter, and merely correct readily apparent typographical errors present in the specification.

It is respectfully submitted that all objections to the specification have been addressed and obviated.

Drawings Objections

The Office Action objected to Figures 5 and 8 as contained in the drawings filed with the original specification for allegedly failing to meet the requirements of 37 CFR § 1.84(p)(4) and (5). In particular, Figure 5 was objected to because the reference numeral 504 was used to designate different elements in the drawing. Figure 8 was objected to because reference numeral 607 utilized in the drawing appeared to be in error.

Applicant has submitted herewith (found in the Appendix attached at the end of this paper) herein requested several replacement sheets of drawings, corresponding to amended versions of Figure 3, Figure 5 and Figure 8. In particular, these amended

figures contain corrections to reference numerals in those figures that delete the reference numeral 310 contained in Figure 3, change the reference numeral for the “freight movement interface” element in Figure 5 from 504 to 503 (a corresponding amendment to the specification has also been entered), and change the reference numeral 607 in Figure 8 to 609. These changes made in the replacement sheets for Figures 3, 5 and 8 are shown relative to the originally filed sheets of drawings in red ink in annotated sheets included in the Appendix.

The Office Action also objects to the drawings because the reference numeral 605 (present in Figure 6) was not referenced in the written description. The specification has been amended to contain proper recitation of this element depicted in the figures.

No new matter has been added through these amendments.

It is respectfully submitted that all objections to the drawings have been addressed and obviated.

Claim Rejections and Objections

Each of the grounds for claim rejections is addressed below.

Claim Objections

Claims 9, 40 and 51 were objected to within the Office Action under 35 U.S.C. § 112 for failing to end in a period. These objections are now moot given Applicant’s cancellation of claims 1-53 without prejudice.

35 U.S.C. § 112

Claims 42 and 53 were rejected by the Office Action under 35 U.S.C. § 112 as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Applicant respectfully submits that these claim rejections have been obviated as claims 42 and 53 have been cancelled above without prejudice.

Reconsideration and removal of this rejection is thus requested.

35 U.S.C. § 103(a)

Claims 1-12, 23-31, and 41 were rejected by the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nicholls in light of the Logility press release. Claims 13-19, 22, 32-37 and 40 were also rejected as being unpatentable over the combination of both Nicholls and the Logility press release in further view of the SAP press release. Claims 20-21 and 38-39 are rejected as allegedly being unpatentable over the combination of both Nicholls and the Logility press release in further view of the Quinn article. Claims 42-67 appear to have been rejected as allegedly being unpatentable over the combined disclosures of Nicholls, the Logility press release, the SAP press release, and the Quinn article. Insofar as these grounds for rejection apply to the claims as presently amended, Applicant respectfully traverses.

Specifically in regard to now cancelled independent claims 1 and 24, the Office Action contends that Nicholls teaches the use of carrier rate structures stored electronically on servers and that the Logility press release teaches one skilled in the art to modify the Nicholls reference to produce Applicant's invention. With regard to Nicholls, it is clear that this reference does not disclose, teach or suggest the coordination and monitoring of shipping costs and performance among a plurality of carriers as is presently recited in currently pending independent claims 54, 65 and 104. Nicholls, as understood by one skilled in the art, teaches the use of one or more rate servers containing information regarding the rate structure for a carrier to determine prices for shipping goods. While shipping goods along routes priced by rate servers may be relevant to Applicant's invention as presently claimed, Nicholls, even when viewed in the light of other cited prior art, still fails to teach or suggest various aspects of the present claims for several reasons.

First, as noted by the Office Action, Nicholls fails to teach determining an optimal transportation solution for a freight movement between an initial pick-up location and a final drop-off location. To overcome this deficiency, the Office Action attempts to combine Nicholls with the Logility press release, alleging that the press release teaches the use of transportation optimization algorithms "to create routes, plan

shipments and simultaneously evaluate modes for each shipment and optimally assign shipments to those modes and routes which guarantee lowest total transportation cost.” Applicant disputes that the Logility press release teaches anything to one skilled in the art.

The Logility press release provides a top level description of an announced business agreement between two companies, Logility and INSIGHT, and makes general allegations that “INSIGHT’s applications [allow users to] easily create routes, plan shipments and simultaneously evaluate all available modes for each shipment and optimally assign shipments to those modes and routes which guarantee lowest total transportation cost.” The press release in no way describes how to optimally assign shipments or how to guarantee the lowest total transportation cost. While the Logility press release may suggest to one skilled in the art that the combination of optimal shipping and low cost shipping are desirable, in no way can the press release be considered to teach or suggest the various specific steps/elements of Applicant’s claimed networks, devices, and methods that construct optimal freight movements and handle accounting for those freight movements. It is settled precedent that a description in a prior publication, insofar as it may be used to defeat a patent as prior art reference supporting an obviousness rejection, can only be relied upon for what it actually discloses. *See Symbol Tech., Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1578 (Fed. Cir. 1991). The Logility press release is a bare document containing virtually no details beyond what was quoted by the Office Action. The Logility press release cannot be considered to disclose constructing optimal freight movements from orders based upon carrier services information and business preferences information, as is presently recited in all pending independent claims. Nor can the Logility press release be applied in this manner to render obvious various features of Applicant’s invention relating to the creation of optimal freight movements as recited in various independent claims.

Further, the combination of Nicholls and the Logility press release is insufficient to render the claims obvious because both are completely silent with regards to monitoring the performance of a plurality of carriers in an electronically integrated shipping environment. Taking claim 54 as representative, Applicant’s claims recite

executing a freight movement by sending tender offers to carriers for optimal freight movement, storing data regarding tracking status and invoiced costs for each order, and then modifying the carrier services information and business preferences information periodically depending upon the stored data. As is taught in Applicant's specification, managers that make transportation planning decisions must be required to balance the need for cheap shipping alternatives with the need for reliable shipping alternatives. In part, this need is met by Applicant's invention by its claimed features that provide the ability to store data regarding each order relating to the tracking status and invoiced costs and then modifying carrier services information and business preferences information in light of the data, which information in turn are used for future planning of freight movements. There is no teaching in any of the asserted prior art, including Nicholls and the Logility press release, of this feature. Thus, allowance of all claims is warranted for the asserted prior art's failure to disclose, teach, or suggest this claimed feature as well.

In rejecting now cancelled dependent claims 13-19, 22, 32-37 and 40, the Office Action asserted that the SAP press release teaches an integrated tracking and shipping system that can utilize information for "external carrier performance tracking, private fleet performance tracking, and equipment tracking to improve a determination of a future transportation solution." Again, this characterization of what the asserted prior art reference actually discloses or teaches is inaccurate, and the combined prior art as understood by one skilled in the art does not render obvious the claims as presently amended.

The SAP press release, much like the Logility press release, is a bare document meant to serve as an announcement regarding a business deal between two companies. The SAP press release announces that FedEx package tracking features and shipping pricing are being made available in the future for loading into SAP's R/3 supply chain management program. Nowhere does the document, as alleged by the Office Action, teach or suggest "external carrier performance tracking, private fleet performance tracking, and equipment tracking to improve a determination of a future transportation solution," as is alleged. While the SAP press release generally discloses the concept of supplying carrier tracking information and freight charges to a user's system

electronically, it does not disclose, teach or suggest executing a freight movement by sending tender offers to carriers for optimal freight movement, storing data regarding tracking status and invoiced costs for each order, and then modifying the carrier services information and business preferences information periodically depending upon the stored data in order to improve planning, as is specifically recited in Applicant's claims.

A user of Applicant's invention will be able to compare the performance of carriers against one another to make future freight movement decisions. The cited portion of the document does not relate to modifying any data used to select carriers or otherwise plan future freight movements, but merely relies upon a quoted bald assertion made by a person in the press release that the FedEx tracking and pricing data will allow users to save money. The claims as presently amended, which contain various elements that describe how embodiments of Applicant's invention utilize tracking and invoice data, therefore cannot be rendered obvious by the combination of the Logility and SAP press releases with Nicholls.

With regard to now cancelled dependent claims 20-21 and 38-39, the Office Action alleged that the Quinn article teaches an integrated tracking and shipping system that posts transportation costs on an accrual basis, and that this teaching renders obvious Applicant's claims that recite the limitations that require sending an invoice to a client for an actual cost of the transportation of the good. Applicant respectfully submits that one of ordinary skill in the art will readily appreciate that accounting for shipping costs on an "accrual basis" (i.e., as costs are incurred as opposed to only after being invoiced) is not the same thing as sending an invoice to a client for an actual cost (as opposed to an estimated cost or a cost quoted in a rate table) of the transportation of the good. The Quinn article therefore cannot be considered to teach elements of the various claims that recite the sending of invoices containing an actual cost.

In light of the above remarks, Applicant respectfully requests reconsideration of all rejections based upon Nicholls and the cited press releases and articles. Applicant respectfully submits that these claims are allowable over the prior art for these reasons, and appropriate reconsideration is requested.

Further, Applicant requests independent consideration of the patentability of

various dependent claims as those claims recite additional features that distinguish over the prior art. For example, claims 55-58, 60, 66, 70-77 and 87-90 all recite various elements of preferred embodiments of the present invention relevant to the planning of optimal freight movements, including the utilization of load building algorithms, batch run logic, and load consolidation logic. These features as claimed are not present in any of the prior art of record. Further, claims 59, 61 and 106-108 recite limitations relating to the utilization of tender offers according to the present invention in a multi carrier environment, which limitations are also not present in the asserted prior art.

Additionally, claims 63-64, 80-85, 98-103 and 112-117 relate to the handling of invoices and the vouchering of payments according to preferred embodiments of the present invention, which claimed elements are not present in the prior art of record. Appropriate independent consideration of all dependent claims is thus respectfully requested.

Application No. 09/882,257
Amendment dated August 18, 2004
Reply to Office Action of March 18, 2004

Conclusion

In view of the foregoing, the Applicant respectfully requests that the Examiner consider the above-noted Response and Amendment when the claims are re-examined on its merits. A timely allowance of the pending claims is requested.

As the number of currently pending claims do not exceed the number of claims previously paid for by Applicant, no "additional claims fees" are believed due at this time.

Applicant also has submitted herewith an Amendment Transmittal document that requests a two-month extension of time. A check is being submitted in an amount believed to be sufficient for the appropriate fee for that request. If the amount of the check is insufficient, or if there are any other fees due in connection with the filing of this Response and Amendment, please charge any difference or necessary fees to Deposit Account No. 50-1349. Likewise, please credit any overpayments to Deposit Account No. 50-1349.

The Examiner is invited to contact Applicant's undersigned representative to expedite prosecution.

Respectfully submitted,

Dated: August 18, 2004

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